

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL A. WILLIAMS,
Plaintiff,

v.

CORIZON MEDICAL PROVIDER, et al.,
Defendants.

Case No. [15-cv-01593-JD](#)

**ORDER OF DISMISSAL WITH LEAVE
TO AMEND**

Plaintiff, a state prisoner, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. The original complaint was dismissed with leave to amend and plaintiff has filed an amended complaint.

DISCUSSION

I. STANDARD OF REVIEW

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review, the Court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” Although a complaint “does not need detailed factual allegations, . . . a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a

1 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above
 2 the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations
 3 omitted). A complaint must proffer “enough facts to state a claim to relief that is plausible on its
 4 face.” *Id.* at 570. The United States Supreme Court has explained the “plausible on its face”
 5 standard of *Twombly*: “While legal conclusions can provide the framework of a complaint, they
 6 must be supported by factual allegations. When there are well-pleaded factual allegations, a court
 7 should assume their veracity and then determine whether they plausibly give rise to an entitlement
 8 to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

9 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege that: (1) a right secured by
 10 the Constitution or laws of the United States was violated, and (2) the alleged deprivation was
 11 committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

12 **II. LEGAL CLAIMS**

13 Plaintiff alleges that defendants were deliberately indifferent to his serious medical needs.
 14 Deliberate indifference to serious medical needs violates the Eighth Amendment’s proscription
 15 against cruel and unusual punishment. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976); *McGuckin v.*
 16 *Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), *overruled on other grounds*, *WMX Technologies, Inc.*
 17 *v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc). A determination of “deliberate
 18 indifference” involves an examination of two elements: the seriousness of the prisoner’s medical
 19 need and the nature of the defendant’s response to that need. *Id.* at 1059.¹

20 A serious medical need exists if the failure to treat a prisoner’s condition could result in
 21 further significant injury or the “unnecessary and wanton infliction of pain.” *Id.* The existence of
 22 an injury that a reasonable doctor or patient would find important and worthy of comment or
 23

24 ¹ Even though pretrial detainees’ claims arise under the Due Process Clause, the Eighth
 25 Amendment serves as a benchmark for evaluating those claims. *See Carnell v. Grimm*, 74 F.3d
 26 977, 979 (9th Cir. 1996) (8th Amendment guarantees provide minimum standard of care for
 27 pretrial detainees). The Ninth Circuit has determined that the appropriate standard for evaluating
 28 constitutional claims brought by pretrial detainees is the same one used to evaluate convicted
 prisoners’ claims under the Eighth Amendment. “The requirement of conduct that amounts to
 ‘deliberate indifference’ provides an appropriate balance of the pretrial detainees’ right to not be
 punished with the deference given to prison officials to manage the prisons.” *Redman v. County*
of San Diego, 942 F.2d 1435, 1443 (9th Cir. 1991) (en banc) (citation omitted).

1 treatment, the presence of a medical condition that significantly affects an individual's daily
2 activities, or the existence of chronic and substantial pain are examples of indications that a
3 prisoner has a serious need for medical treatment. *Id.* at 1059-60.

4 A prison official is deliberately indifferent if he or she knows that a prisoner faces a
5 substantial risk of serious harm and disregards that risk by failing to take reasonable steps to abate
6 it. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). The prison official must not only "be aware of
7 facts from which the inference could be drawn that a substantial risk of serious harm exists," but
8 also "must also draw the inference." *Id.* If a prison official should have been aware of the risk,
9 but did not actually know, the official has not violated the Eighth Amendment, no matter how
10 severe the risk. *Gibson v. County of Washoe*, 290 F.3d 1175, 1188 (9th Cir. 2002). "A difference
11 of opinion between a prisoner-patient and prison medical authorities regarding treatment does not
12 give rise to a § 1983 claim." *Franklin v. Oregon*, 662 F.2d 1337, 1344 (9th Cir. 1981). In
13 addition "mere delay of surgery, without more, is insufficient to state a claim of deliberate medical
14 indifference.... [Prisoner] would have no claim for deliberate medical indifference unless the
15 denial was harmful." *Shapely v. Nevada Bd. Of State Prison Comm'rs*, 766 F.2d 404, 407 (9th
16 Cir. 1985).

17 Plaintiff's original complaint was dismissed with leave to amend because he only named as
18 defendant, Corizon Medical Provider, a company that provides healthcare at Alameda County Jail.
19 Plaintiff was informed that he needed to identify specific defendants and describe how they were
20 deliberately indifferent to his serious medical needs.

21 In the amended complaint, plaintiff has again failed to identify any specific individual. He
22 states that he requested on many occasions to be seen by medical staff for pain, muscle spasms,
23 cramps, headaches, and sinus problems. He was provided pain medication, a nasal spray, and an
24 analgesic balm. Plaintiff believed he had nerve damage and he needed an MRI and to be seen by a
25 neurologist. Later he was taken to Highland Hospital where he was seen by a neurologist and
26 prescribed medication for nerve damage which helped tremendously.

27 Plaintiff states he does not know the identity of any of the defendants and requires
28 discovery in order to obtain his medical file. However, plaintiff is not specific on which Doe

defendant violated his constitutional rights. He refers to nurses who reviewed his medical requests and other individuals who provided treatment. It is not clear if there are multiple nurses and doctors or he was repeatedly treated by the same nurse and doctor. Although the use of “John Doe” to identify a defendant is not favored in the Ninth Circuit, *see Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980); *Wiltsie v. Cal. Dep’t of Corrections*, 406 F.2d 515, 518 (9th Cir. 1968), situations may arise where the identity of alleged defendants cannot be known prior to the filing of a complaint. Here plaintiff has failed to attempt to distinguish what actions are attributed to which Doe defendants.

In addition, plaintiff has included 15 pages of medical reports from the jail that span from December 2012, to February 2014, so he does have at least a portion of his medical file. The medical reports describe a great deal of medical care provided to plaintiff including pain medication, EKG tests, frequent blood pressure checks, diagnostic lab work, and a referral to a neurologist after a mass was found on his neck. Several of the reports contain names of nurses and doctors who treated plaintiff, though it is not clear if these are the appropriate defendants. The amended complaint is dismissed with leave to amend to provide more information regarding the identity and actions of specific defendants and how they were deliberately indifferent to his serious medical needs.

CONCLUSION


1. The amended complaint is **DISMISSED** with leave to amend. The second amended complaint must be filed within **twenty-eight (28) days** of the date this order is filed and must include the caption and civil case number used in this order and the words **SECOND AMENDED COMPLAINT** on the first page. Because an amended complaint completely replaces the prior complaint, plaintiff must include in it all the claims he wishes to present. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). He may not incorporate material from the prior complaint by reference. Failure to amend within the designated time will result in the dismissal of this action.

2. It is the plaintiff’s responsibility to prosecute this case. Plaintiff must keep the Court informed of any change of address by filing a separate paper with the clerk headed “Notice

1 of Change of Address,” and must comply with the Court’s orders in a timely fashion. Failure to
2 do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of
3 Civil Procedure 41(b).

4 **IT IS SO ORDERED.**

5 Dated: September 3, 2015

6
7
8 
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
JAMES DONATO
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL A. WILLIAMS,
Plaintiff,

v.

CORIZON MEDICAL PROVIDER, et al.,
Defendants.

Case No. [15-cv-01593-JD](#)

CERTIFICATE OF SERVICE

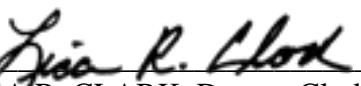
I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 3, 2015, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Michael A. Williams
Correctional Training Facility
C44000
P.O. Box 690
Soledad, CA 93960-0690

Dated: September 3, 2015

Susan Y. Soong
Clerk, United States District Court

By: 
LISA R. CLARK, Deputy Clerk to the
Honorable JAMES DONATO